

WETLANDS COUNCIL

MINUTES

February 27, 2007

The Wetlands Council met on Tuesday, February 27, 2007 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Brian K. Fowler, Chairman, Camilla Lockwood, Thomas G. Chrisenton, Lawrence E. Morse, John S. Cobb, Sharon Champagne, Thomas Sloan, Jack Ruderman, and Dennis Danna

Absentees: Paul W. Goodwin, Seth Prescott and Dan Lynch

The meeting was called to order by Chairman Brian K. Fowler at 9:07 a.m.

1. Approval of Minutes of December 12, 2006 Council Meetings

Councilor Morse noted 2 corrections to the December minutes. Tom Chrisenton had a correction also. A motion was made by Councilor Morse and seconded by Councilor Cobb to accept the minutes of December 12, 2006 with corrections noted. It was unanimously voted.

2. Status of Appeals

Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with the Council members.

- Docket No. 04-21 WtC – Lake Shore Realty Trust: WB #2001-01294
Pre-hearing conference was held on December 19, 2006. Parties reached an agreement in principal with a 30 day recess. On the 26th of February Attorney Varney, (for the Appellant) was in contact to say the parties were not able to settle, a status report will be filed along with a request that the Council schedule this appeal for hearing.
No action was needed or taken by the Council
- Docket No. 05-04 WtC – Philip and Georgette Smith: WB #2000-00914
On December 12, 2006, a written Decision & Order on Rehearing was issued that granted the Appeal. On December 28, 2006 DES timely filed a Motion for Reconsideration. Appellant filed an Objection to the DES' Motion for Reconsideration on January 4, 2007.

A motion was made by Councilor Chrisenton and seconded by Councilor Morse to accept DES' Motion for Reconsideration. There were 4 ayes, 3 nays, and 1 abstention. A hearing is to be scheduled.

Councilor Lockwood wanted it noted that there was an objection filed to this Motion for Reconsideration by Attorney Ramsdell.

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Councilor Morse reiterated that the Council had been informed by Council's attorney, after the first hearing, that council members can use their experience in deliberations.

- Docket No. 05-24 WtC – Evelyn, Geno and Fransesca Marconi: WB #2004-02046
On February 2, 2007 Applicant John Gregg files a letter relinquishing the permit. On February 20th the Appeal was withdrawn. This appeal is closed.
- Docket No. 06-03 WtC – Donald and Mary Larson: WB #2005-02387
On December 11, 2006 the Pre-Hearing Conference convened and parties continue settlement negotiations. An agreement was reached in principal and the Appellant will file a written withdrawal once the settlement is finalized. No action was needed or taken by the Council.
- Docket No. 06-06 WtC – West Alton Marina: WB #2005-00049
On December 11, 2006 the Pre-Hearing Conference convened and parties continue settlement negotiations. An agreement was reached in principal and the Appellant will file a written withdrawal once the settlement is finalized. No action was needed or taken by the Council.
- Docket No. 06-09 WtC – Christopher and Christine Collins: WB #2005-02587
On January 22, 2007 a Pre-Hearing Conference was rescheduled to March 19, 2007. Negotiations are continuing and an agreement has been reached in principal. Appellant will file a written withdrawal once the settlement is finalized. No action was needed or taken by the Council.
- Docket No. 06-10 WtC – Ralph and Virginia Sanborn: WB #2006-00325
December 18, 2006 a Pre-Hearing order was issued along with an Appeal Hearing Notice. The Council will hear this Appeal today at 10 AM.
- Docket No. 06-11 WtC – Dennis Proulx: WB # 2006-00769
On January 10, 2007 Attorney Noether (AGO) Withdrew her Appearance on behalf of DES. Attorney Patterson (AGO) filed her Appearance for DES. On January 22, 2007 the Pre-Hearing Conference was scheduled for March 19, 2007. No action was needed or taken by the Council.
- Docket No. 06-12 WtC – Bodanza et al.: WB #2002-02483
On January 22, 2007 Pre-Hearing Conference was rescheduled for March 19, 2007 at 1 PM. No action was needed or taken by the Council.
- Docket No. 06-14 WtC – Scott DeSantis: WB #2004-02635
Appeal is tabled at the request of the parties. No action was needed or taken by the Council.
- Docket No. 06-16 WtC – Shane Forest: WB#1999-01294
This Appeal, at the request of the parties, is stayed. No action was needed or taken by the Council.
- Docket No. 06-17 WtC – Mary George: WB#2005-01205
On December 12, 2006 the Council voted to Summarily Dismiss this Appeal as not timely filed. On December 29, 2006 Appellant files a Request for Reconsideration. January 23,

2006 Written Decision and Order to Deny the Request for Reconsideration was issued. This Appeal is closed.

- Docket No. 06-18 WtC – Richard Totaro: WB#2006-01921
Notice of Appeal timely filed by Hand Delivery (30th Day) on December 6, 2006. Receipt of Appeal letter distributed on December 8, 2006. Twenty day waiting period had to be allowed per the rules.

A motion was made by Councilor Chrisenton and seconded by Councilor Cobb to accept the Appeal and it was voted unanimously.

- Docket No. 07-01 WtC – Robert and Betty Howland: WB#2006-01654
On January 3, 2007 Notice of Appeal timely filed by Certified Mail (27th Day). Notice was missing documents and missing copies were filed on January 5, 2007. Receipt of Appeal letter was distributed on January 8, 2007.

A motion was made by Councilor Morse and seconded by Councilor Champagne to accept the Appeal and it was voted unanimously.

- Docket No. 07-02 WtC – Town of Barrington: WB#2004-02817
On January 8, 2007 Notice of Appeal filed by Hand Delivery, not Timely filed (31st Day). Also Attorney Mark E. Beliveau files an Appearance on behalf of the Appellant. January 9, 2007 Receipt of Appeal letter was distributed. Attorney Jennifer Patterson files an Appearance on behalf of DES on January 24, 2007. On January 29, 2007 Attorney Tony F. Soltani files an Appearance on behalf of the Applicant. On February 26, 2007 Attorney Beliveau sent a letter regarding filing deadlines that fall on a Sunday which was distributed at this meeting.

Councilor Morse recused himself from these deliberations.

At 9:40 a motion was made by Councilor Chrisenton and seconded by Councilor Lockwood to break for recess so the Council could meet with their attorney and it was unanimously voted.

Returned from recess at 9:47.

A motion was made by Councilor Chrisenton and seconded by Councilor Lockwood to Table the issue until written advice is received from counsel and it was voted unanimously.

- Docket No. 07-03 WtC – James Watson: WB#2006-01302
On February 5, 2007 Notice of Appeal filed by Hand Delivery (18th Day). Receipt of Appeal letter distributed on February 8, 2007. Attorney Bianco filed an Appearance on behalf of the appellants on February 26, 2007.

A motion was made by Councilor Cobb and seconded by Councilor Morse to accept the Appeal and it was voted unanimously.

It was decided to go on to Old Business before the Hearing.

3. **Old Business**

None

4. **Other Business**

HB 219 was distributed. This bill is to add a single councilor to represent Farm Bureau and timberland owners.

Chairman Fowler announced that he will be retiring from the Wetlands Council when his term expires in July 2007. He will be stepping down as Chairman at the end of today's meeting so Larry Morse can step up from his Vice Chair position. Chairman Fowler will continue on as Hearings Officer until July.

A motion was made by Councilor Chrsenton and seconded by Councilor Cobb to elect Councilor Morse as interim chair, as a result of Chairman Fowler's resignation from the chair position, until January 1, 2008 when re-election will be held and it was voted unanimously.

Michael Sclafani, Appeals Clerk, announced that he will also be leaving his position in July 2007.

Council broke for Hearing at 10 AM.

Council reconvened at 1:25 PM.

5. **Wetlands Bureau Update**

A. **Draft In-lieu Fee Rules**

Collis Adams, Wetlands Bureau, referred to the draft of the rules that were mailed to the Council prior to the meeting for review. Council's comments and suggestions were solicited for another re-write of the draft before it goes to public hearing.

Councilor Morse gave a summary of what the Operating Committee discussed at a meeting held prior to this meeting today. Main issues in respect to the rules that the Council have expressed are: 1) providing clarity in respect to the terminology, 2) improving the understandability by general public, 3) eliminating confusion in them, 4) and improving the process so the rules for the general public are clear.

Main concern is to look for clarity and simplicity as much as possible in the end product.

Councilor Lockwood shared her support for requiring easements over deed restrictions, asked several questions in the rules and her questions were addressed and noted by Lori Sommer, Wetlands Bureau.

Lori S. shared that one goal is to provide towns with a running list of which of the properties protected by easements require monitoring reports.

Proposed rules with all the changes had been mailed to the Council on February 21st. Will publish rule making notice at the end of the week and hold a public hearing around March 26,

2007. The record will then be open for 10 days after the close of the hearing and they then will be finalized and brought to JLCAR.

Councilor Morse will respond to the Commissioner, within the 15 days, stating the rules have been reviewed and the recommendations made. The Council will want to review the final rules before they go to JLCAR, which is tentatively May 17th. The Council directed the Bureau to proceed with the rulemaking process.

B. Miscellaneous Items

Councilors Lockwood and Ruderman spoke to the interpretation of several regulations and would like the attorney general to give the Council an opinion for future use. Chairman Fowler especially wants interpretation in regards to administrative gloss.

6. Next Meeting

The next meeting will be April 10, 2007. There is no hearing scheduled.

7. Adjournment

A motion was made by Councilor Lockwood and seconded by Councilor Morse and was unanimously voted to adjourn.

The meeting adjourned at approximately 2:15 PM.